

BEFORE THE BOARD OF CHIROPRACTORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF AMENDMENT
24.126.301 definitions, 24.126.401)	AND ADOPTION
fee schedule, 24.126.501, 24.126.507,)	
24.126.510, and 24.126.511 licensing and)	
scope of practice, 24.126.701 and)	
24.126.704 licensing and board specific)	
rules, 24.126.910 impairment evaluators,)	
24.126.2101 renewals-continuing education))	
requirements, 24.126.2301 unprofessional)	
conduct, and the adoption of NEW RULE I)	
fee abatement, and NEW RULE II)	
participation in disaster and emergency)	
care-liability of chiropractor)	

TO: All Concerned Persons

1. On April 6, 2006, the Board of Chiropractors (board) published MAR Notice No. 24-126-28 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 845 of the 2006 Montana Administrative Register, issue no. 7.

2. On April 27, 2006, a public hearing was held on the proposed amendment and adoption of the above-stated rules. Two individuals testified at the hearing and written comments were received by the May 5, 2006, deadline.

3. The board has thoroughly considered all comments received. A summary of the comments received and the board's responses are as follows:

COMMENT 1: Several commenters opposed the proposed fee increases at ARM 24.126.401. The reasons in opposition to the proposed amendments were generally because of what commenters viewed as too great a percentage increase in the fees for students, interns, and preceptors and all fees in general, a perception that fees are increasing while the board's workload decreases, and concerns regarding a surplus of board funds several years ago and a shortage now. Commenters questioned whether the proposed increases were warranted, suggested the board explore cost cutting measures, and requested more information supporting the need for the proposed increases.

RESPONSE 1: The board acknowledges all the comments and concerns regarding the proposed fee increases. However, following receipt of budgetary information from the department and discussions at previous board meetings, the board determined that, to meet their financial obligations and adhere to their statutory fiscal responsibility, the fees must be increased in the amounts proposed. The board

determined that the proposed fee increases are necessary to ensure that all board fees remain commensurate with associated costs as required by 37-1-134, MCA. In addition, the board followed all statutory requirements of the administrative rulemaking process as outlined in the Montana Administrative Procedure Act at 2-4-302, MCA, et seq., including provisions for public notice and public participation in the board's rulemaking.

COMMENT 2: Two commenters opposed the amendment to ARM 24.126.2101(3) requiring all licensed chiropractors to take four hours of professional boundaries and ethics continuing education every four years. The commenters stated this requirement penalizes all practicing chiropractors for the poor behavior of only a few.

RESPONSE 2: The board determined that it is important to the ongoing protection of the public to continually expose licensees to ethics and professional boundary education. The board noted that, even though this education is received in school, many of the complaints reviewed by the screening panel deal with ethics violations. The board is committed to being proactive regarding ethics and boundary issues and has concluded this requirement is a positive step toward this goal.

COMMENT 3: Several commenters opposed the amendment to ARM 24.126.2301(1)(f) clarifying that it is unprofessional conduct for a chiropractor to charge a patient a different fee than that submitted to a third-party payer. The reasons offered in opposition to the amendment included that it infringes upon free competition and is possibly price fixing, a perception that the rule requires chiropractors to charge all insurance companies the same fees even when required to charge some insurers their limiting fees, and that the rule interferes with a businessperson's right to charge the fees they want. Commenters further stated that the proposed amendment does not further clarify the rule and that it would eliminate a chiropractor's opportunity to create agreements with local businesses and organizations for the exclusive provision of chiropractic services, sometimes for reduced fees.

RESPONSE 3: The board considered the comments and decided not to proceed with the proposed amendment of the rule at this time. The board will gather additional information and discuss the relevant issues and commenters' concerns at future board meetings to determine if new or additional language would better clarify the rule and further the board's intent.

COMMENT 4: Commenters also expressed concern that the proposed amendment to ARM 24.126.2301(1)(f) permitting chiropractors to offer free services only to the indigent or economically deprived would restrict humanitarian efforts by chiropractors. The commenters stated they have a right to give away whatever services they choose and suggested alternative language based upon the fees rule of the Oregon Board of Chiropractic Examiners.

RESPONSE 4: See response 3.

COMMENT 5: Several commenters suggested the board review and perhaps incorporate language from the fees rule of the Oregon Board of Chiropractic Examiners to amend and better clarify unprofessional conduct at ARM 24.126.2301(1)(f).

RESPONSE 5: See response 3.

4. The board has amended ARM 24.126.301, 24.126.401, 24.126.501, 24.126.507, 24.126.510, 24.126.511, 24.126.701, 24.126.704, 24.126.910, and 24.126.2101 exactly as proposed.

5. The board is not amending ARM 24.126.2301.

6. The board has adopted NEW RULE I (24.126.402) and NEW RULE II (24.126.415) exactly as proposed.

BOARD OF CHIROPRACTORS
Daniel Prideaux, D.C., President

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 12, 2006